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(iii) The settlement judge, with the concurrence of the Chief Administrative Law Judge, determines that a personal meeting is necessary for a resolution of substantial issues, and represents a prudent use of resources.

(8) *Confidentiality of settlement discussions.* All discussions between the parties and the settlement judge shall be off-the-record. No evidence regarding statements or conduct in the proceedings under this section is admissible in the instant proceeding or any subsequent administrative proceeding before the Department, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. The settlement judge shall not discuss any aspect of the case with any administrative law judge or other person, nor be subpoenaed or called as a witness in any hearing of the case or any subsequent administrative proceedings before the Department with respect to any statement or conduct during the settlement discussions.

(9) *Contents of consent order or settlement agreement.* Any agreement disposing of all or part of the proceeding shall be written and signed by a parties. Such agreement shall conform to the requirements of paragraph (b) of this section.

(10) *Report of the settlement.* If a settlement is reached, the parties shall report to the presiding judge in writing within seven working days of the termination of negotiations. The report shall include a copy of the settlement agreement and/or proposed consent order. If a settlement is not reached, the parties shall report this to the presiding judge without further elaboration.

(11) *Review of agreement by presiding judge.* A settlement agreement arrived at with the help of a settlement judge shall be treated by the presiding judge as would be any other settlement agreement.

(12) *Non-reviewable decisions.* Decisions concerning whether a settlement judge should be appointed, the selection of a particular settlement judge, or the termination of proceedings

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under this section, are not subject to review by Department officials.

[48 FR 32538, July 15, 1983, as amended at 58 FR 38500, July 16, 1993; 64 FR 47089, Aug. 27, 1999]

§ 18.10 Parties, how designated.

(a) The term *party* whenever used in these rules shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action shall be designated as *plaintiff*, *complainant* or *claimant*, as appropriate. A party against whom relief or other affirmative action is sought in any proceeding shall be designated as a *defendant* or *respondent*, as appropriate. When a party to the proceeding, the Department of Labor shall be either a party or party-in-interest.

(b) Other persons or organizations shall have the right to participate as parties if the administrative law judge determines that the final decision could directly and adversely affect them or the class they represent, and if they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties.

(c) A person or organization wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state: (1) Petitioner's interest in the proceeding, (2) how his or her participation as a party will contribute materially to the disposition of the proceeding, (3) who will appear for petitioner, (4) the issues on which petitioner wishes to participate, and (5) whether petitioner intends to present witnesses.

(d) If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraphs (a) and (b) of this

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section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner written notice of the decision on his or her petition. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as *amicus curiae*. The administrative law judge shall give written notice to each party of each petition granted.

§ 18.11 Consolidation of hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge or the administrative law judge assigned may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the others, and a separate or joint decision shall be made, at the discretion of the administrative law judge as appropriate.

§ 18.12 Amicus curiae.

A brief of an *amicus curiae* may be filed only with the written consent of all parties, or by leave of the administrative law judge granted upon motion, or on the request of the administrative law judge, except that consent or leave shall not be required when the brief is presented by an officer of an agency of the United States, or by a state, territory or commonwealth. The *amicus curiae* shall not participate in any way in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

§ 18.13 Discovery methods.

Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interro-

atories; production of documents or other evidence for inspection and other purposes; and requests for admission. Unless the administrative law judge orders otherwise, the frequency or sequence of these methods is not limited.

§ 18.14 Scope of discovery.

(a) Unless otherwise limited by order of the administrative law judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 18.15 Protective orders.

(a) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to protect a